



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

02 SEP 2009

Colonel Andrew W. Backus  
District Engineer  
Norfolk District  
U.S. Army Corps of Engineers  
803 Front Street  
Norfolk, VA 23510-1096

RE: CENAO-TS-REG Public Notice # 05-VR0222 (Tri-City Properties, L.L.C.)

Dear Colonel Backus:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced Public Notice dated August 4, 2009 for construction of a mixed use, multi-family residential development with integrated community related commercial services. The proposed development would impact 29.8 acres of forested wetlands that are a tributary to Stumpy Lake/Gum Swamp in Chesapeake, VA. This submittal is an alternative to a previously proposed project on the same property that would have impacted a total of 181.3 acres of wetlands.

The Corps of Engineers issued a public notice for the previously proposed project in February, 2005 for 144.6 acres of wetland impacts. In letters to the Corps dated April 4, 2005 and April 28, 2005, EPA recommended denial of a permit or preparation of an Environmental Impact Statement (EIS) prior to making any decision on the project. EPA's responses were prepared consistent with the *Clean Water Act Section 404(q) Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army dated August 11, 1992 (MOA)*.

The Corps issued another public notice in January, 2007 for an additional 36.7 acres of wetlands impacts resulting from revisions to the wetland delineation on the subject property. EPA's response dated February 13, 2007, again recommended denial stating that the application was inconsistent with Section 404(b)(1) guidelines. Should the Corps decide to issue a permit over EPA's objections, EPA recommended the preparation of an EIS including performing an effective wetland functional analysis and evaluating the functional relationship between the wetlands and Stumpy Lake.

With regard to the current public notice, EPA recognizes that the impacts from this alternative are about one-sixth of the impacts compared to the previous proposal. While the impacts are substantially reduced, the Section 404(b)(1) guidelines clearly state that alternatives are presumed to be available for a non-water dependent project. The proposed project is not

water-dependent and the information available is insufficient to justify the need to directly impact 29.8 acres of wetlands.

In the Agency's letters dated April 4, 2005 and April 25, 2005, EPA identified the wetlands on this parcel as part of a larger unique and valuable wetland ecosystem. At that time EPA designated Stumpy Lake and the associated wetlands as an aquatic resource of national importance (ARNI). Filling large areas of these forested wetlands has the potential to cause significant and unacceptable adverse effects on Stumpy Lake, Gum Swamp and the North Landing River Natural Preserve Area and Watershed.

EPA believes that the proposed project may result in substantial and unacceptable impacts to aquatic resources of national importance. Furthermore, EPA believes that the application is inconsistent with Section 404(b)(1) guidelines and that additional avoidance and minimization measures are available. These measures include, but are not limited to, scaling back the proposed project and amending the site plan in a way that avoids wetlands, siting the proposed development on the upland parcels totaling approximately 90 acres that front on Elbow Road and re-evaluating/ re-negotiating zoning and proffers with the City of Chesapeake given the change in the scale of the proposal.

The applicant is required to identify the least environmentally damaging practicable alternative (LEDPA) by examining both onsite and offsite alternatives and provide all documentation required to support claims of practicability, costs (direct and indirect), engineering factors, updated maps, drainage plans, site conditions, zoning, proffer statement(s) and any other relevant information. With respect to matters of local zoning, it is incumbent upon the applicant to exhibit that all potential venues have been fully vetted in order to justify that the selected alternative is the LEDPA.

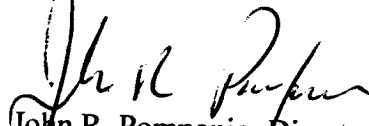
EPA recommends that no permit be issued for the proposed alternative. If the Corps decides to issue the permit over the Agency's objection, then EPA recommends the development of an EIS under the authority of the National Environmental Policy Act (NEPA) as EPA believes that issuance of the permit would constitute a major Federal action significantly affecting the environment. The Corps' preliminary review indicates that an environmental impact statement may be required because of the amount of wetlands affected. Given the very large impact, the likelihood of significant direct, indirect and cumulative impacts, EPA believes that it is appropriate for the Corps of Engineers to develop an EIS taking into consideration those analyses noted above.

Finally, the applicant proposes to mitigate for impacts by creating wetlands on a nearby parcel by grading uplands to create wetlands. EPA does not support this approach, but will defer commenting to a time, if or when, it is determined that impacts are unavoidable.



Thank you for the opportunity to comment on this proposed alternative. Should you have any questions or desire to discuss this matter further, please contact me or Jeffrey D. Lapp, Assistant Director for the Office of Environmental Programs, at (215) 814-2717.

Sincerely,



John R. Pomponio, Director  
Environmental Assessment & Innovation Division

CC: Ellen Gilinsky, Virginia Department of Environmental Quality  
Dave Davis, Virginia Department of Environmental Quality  
Kim Smith, US Fish and Wildlife Service

